

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| DANNY TOLIVER, Plaintiff, v. CITY OF PHILADELPHIA, Defendant. | : : : : : : : : : : | CIVIL ACTION No. 02-4554 |
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**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS
POLICE OFFICERS CAMPOLONGO AND CARRASQUILLO
TO PLAINTIFF’S COMPLAINT**

Defendants Police Officers Camplongo and Carrasquillo (hereinafter “answering defendants”), by and through undersigned counsel, hereby respond to plaintiff’s complaint as follows:

1. After reasonable investigation, answering defendants are unable to admit or deny the allegations in this paragraph, and therefore denies same.
2. The allegations contained in this paragraph pertain to parties other than answering defendant, and therefore require no response.
3. Admitted in part, denied as state in part. It is admitted only that at all times relevant hereto, defendants Camplongo and Carrasquillo were members of the Philadelphia Police Department. By way of further answer, the allegations contained in this paragraph constitute plaintiff’s statement of the case, and/or constitute conclusions of law as to which no responsive pleading is required.

4. Admitted in part, denied as state in part. It is admitted only that at all times relevant hereto, defendants Camplongo and Carrasquillo were members of the Philadelphia Police Department. By way of further answer, the allegations contained in this paragraph constitute plaintiff's statement of the case, and/or constitute conclusions of law as to which no responsive pleading is required.

5. The allegations contained in this paragraph pertain to parties other than answering defendant, and therefore require no response. By way of further answer, the allegations contained in this paragraph constitute plaintiff's statement of the case, and/or constitute conclusions of law as to which no responsive pleading is required.

6. It is admitted only that this Court has jurisdiction over this matter.

7. It is admitted only that venue is proper in the Eastern District of Pennsylvania.

8. The allegations contained in this paragraph pertain to parties other than answering defendants, and therefore require no response. To the extent a response is required, it is admitted only that answering defendants conducted a vehicle stop of the vehicle operated by plaintiff. The remainder of the allegations are denied as untrue, inaccurate and misleading.

9. Denied. The allegations contained in this paragraph are denied as untrue, inaccurate and misleading.

10. Denied. The allegations contained in this paragraph are denied as untrue, inaccurate and misleading.

11. Denied. The allegations contained in this paragraph are denied as untrue, inaccurate and misleading.

12. Denied. The allegations contained in this paragraph are denied as untrue, inaccurate and misleading.

13. Denied. The allegations contained in this paragraph are denied as untrue, inaccurate and misleading.

14. Denied. The allegations contained in this paragraph are denied as untrue, inaccurate and misleading.

15.

16. Denied. The allegations contained in this paragraph are denied as untrue, inaccurate and misleading.

17. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

18. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

19. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge

or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

20. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required.

To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

21. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required.

To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

AS TO COUNT I

22. Answering defendants incorporate by reference the responses to paragraphs 1 through 21 herein, as if the same were set forth at length.

23. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required.

To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

24. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

25. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

26. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

27. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required.

To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

WHEREFORE, answering defendants deny that they are liable upon the cause of action declared upon, and demand judgment in their favor plus interest and costs.

AS TO COUNT II

28. Answering defendants incorporate by reference the responses to paragraphs 1 through 27 herein, as if the same were set forth at length.

29. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

30. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading.

31. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue,

inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

32. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

33. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

34. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

WHEREFORE, answering defendants deny that they are liable upon the cause of action declared upon, and demand judgment in their favor plus interest and costs.

AS TO COUNT III

35. Answering defendants incorporate by reference the responses to paragraphs 1 through 34 herein, as if the same were set forth at length.

36. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading.

37. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading.

38. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

39. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading.

WHEREFORE, answering defendant denies that it is liable upon the cause of action

declared upon, and demands judgment in its favor plus interest and costs.

AS TO COUNT IV

40. Answering defendants incorporate by reference the responses to paragraphs 1 through 39 herein, as if the same were set forth at length.

41-51. The allegations contained in these paragraphs pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

WHEREFORE, answering defendants deny that they are liable upon the cause of action declared upon, and demand judgment in their favor plus interest and costs.

AS TO COUNT V

52. Answering defendants incorporate by reference the responses to paragraphs 1 through 51 herein, as if the same were set forth at length.

53. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading.

54. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required.

To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

55. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required.

To the extent a response is required, denied.

WHEREFORE, answering defendants deny that they are liable upon the cause of action declared upon, and demand judgment in their favor plus interest and costs.

AS TO COUNT VI

56. Answering defendants incorporate by reference the responses to paragraphs 1 through 55 herein, as if the same were set forth at length.

57. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required.

To the extent a response is required, the allegations in this paragraph are denied as untrue, inaccurate and misleading. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

58. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required.

To the extent a response is required, denied.

59. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, denied. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

60. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, denied. By way of further answer, answering defendants have no knowledge or means of ascertaining the truth or falsity of the averments respecting the injuries, sufferings and/or damages allegedly sustained by plaintiff, and the same are accordingly denied.

61. The allegations contained in this paragraph pertain to parties other than answering defendants, and/or constitute conclusions of law, as to which no responsive pleading is required. To the extent a response is required, denied.

WHEREFORE, answering defendants deny that they are liable upon the cause of action declared upon, and demand judgment in their favor plus interest and costs.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Answering defendants assert all the defenses, immunities, and limitations of damages available to them under the “Political Subdivision Tort Claims Act,” and aver that plaintiff’s remedies are limited exclusively thereto. Act of Oct. 5, 1980, No. 142, P.L. 693, 42 Pa C.S.A. §8541 et seq.

THIRD AFFIRMATIVE DEFENSE

Answering defendants are immune from liability under the doctrine of qualified immunity.

WHEREFORE, answering defendants deny that they are liable upon all of the causes of action declared upon, and demand judgment in their favor plus interest and costs.

City of Philadelphia Law Department

Lynne A. Sitarski
Deputy City Solicitor
Law Department - Civil Rights Unit
1515 Arch Street, 14th Floor
Philadelphia, PA 19102

DATED: October 17, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a copy of the Answer with Affirmative Defenses of Defendants Campolongo and Carrasquillo to be served upon *pro se* plaintiff, via first class mail, postage prepaid, as follows:

Danny Toliver, Pro Se
P.O. Box 28723
Philadelphia PA 19151

By: _____

Lynne A. Sitarski
Deputy City Solicitor
City of Philadelphia Law Dept.
1515 Arch Street, 14th Floor
Philadelphia, PA 19102
215-683-5446

DATED: July 31, 2002